

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CARPENTERS HEALTH AND SECURITY
TRUST OF WESTERN WASHINGTON;
CARPENTERS RETIREMENT TRUST OF
WESTERN WASHINGTON; CARPENTERS-
EMPLOYERS VACATION TRUST OF
WESTERN WASHINGTON; and
CARPENTERS-EMPLOYERS
APPRENTICESHIP AND TRAINING TRUST
FUND OF WASHINGTON-IDAHO,

Plaintiffs,

v.

GHL ARCHITECTURAL MILLWORK, LLC, a
Washington limited liability company; and
TAVIS GAUDET, an individual,

Defendants.

Case No. 2:19-cv-01030

COMPLAINT FOR MONETARY
DAMAGES

I. PARTIES

1.1 Plaintiff Carpenters Health and Security Trust of Western Washington (“Carpenters Health Trust”) is a Taft-Hartley trust fund established to provide and maintain hospital, medical, dental, vision, disability or death benefits and any other similar benefits, or any combination thereof as the Trustees may determine in their discretion for the benefit

1 of the Employees and their beneficiaries. The Carpenters Health Trust maintains its
2 principal office in Seattle, King County, Washington.

3 1.2 Plaintiff Carpenters Retirement Trust of Western Washington (“Carpenters
4 Retirement Trust”) is a Taft-Hartley trust fund established to provide retirement and
5 associated death benefits for employees and their beneficiaries. The Carpenters Retirement
6 Trust maintains its principal office in Seattle, King County, Washington.

7 1.3 Plaintiff Carpenters-Employers Vacation Trust of Western Washington
8 (“Carpenters Vacation Trust”) is a Taft-Hartley trust fund established to provide vacation
9 benefits for employees. The Carpenters Vacation Trust maintains its principal office in
10 Seattle, King County, Washington.

11 1.4 Plaintiff Carpenters-Employers Apprenticeship and Training Trust Fund of
12 Washington-Idaho (“Carpenters Apprenticeship Trust”) is a Taft-Hartley trust fund
13 established to defray, in whole or in part, costs of apprenticeship or other training programs
14 for the education of apprentices and journeymen carpenters. The Carpenters Apprenticeship
15 Trust maintains its principal office in Seattle, King County, Washington.

16 1.5 The Plaintiffs are commonly known as and referred to collectively as the
17 Carpenters Trusts of Western Washington (or the “Carpenters Trusts”).

18 1.6 Defendant GHJ Architectural Millwork, LLC (“GHJ”) is a Washington
19 limited liability company with its principal place of business in Seattle, King County,
20 Washington.

21 1.7 Defendant Tavis Gaudet is an individual believed to be residing in Seattle,
22 King County, Washington. Mr. Gaudet is the sole member/governor of GHJ Architectural
23 Millwork, LLC and is the company’s registered agent.

II. JURISDICTION AND VENUE

2.1 This Court has exclusive jurisdiction pursuant to §502(e)(1) of the Employee Retirement Income Security Act of 1974 (“ERISA”), codified at 29 U.S.C. §1132(e)(1). This Court has supplemental jurisdiction over the Fourth Cause of Action pursuant to 28 U.S.C. §1367

2.2 Venue in this Court is proper pursuant to §502(e)(2) ERISA, codified at 29 U.S.C. §1132(e)(2), and pursuant to agreement between the parties.

III. FACTS

3.1 In 2018 and early 2019, Tavis Gaudet, identifying himself as “Owner,” Michael Lamons, identifying himself as “Project Manager,” or David Fison, identifying himself as “PM,” executed five Project Agreements on behalf of GHL Architectural Millwork, LLC with the Pacific Northwest Regional Council of Carpenters (the “Union”). The Project Agreements, which are identical in language, incorporate by reference the terms and conditions of the *2018 – 2021 Agreement between Associated General Contractors of Washington and Carpenters, Piledrivers, and Millwrights of the Pacific Northwest Regional Council of Carpenters United Brotherhood of Carpenters and Joiners of America*, effective June 1, 2018 (the “Master Labor Agreement”):

1. DESIGNATED LABOR AGREEMENT: The employer adopts and agrees to abide by the following Labor Agreement:

☒ Western & Central WA Master Labor Agreement Rep by:
AGC of Western WA Effective: 6/1/18 to 5/31/21.

3.2 The Project Agreements cover work performed by GHL on a variety of projects in Western Washington including the Brooklyn 65 project in Seattle; the Anko, Din Tai Fung, and Jesters projects in Bellevue; and the Fuji Steakhouse project in Redmond.

3.3 By signing the Project Agreements, GHL agreed to make fringe benefit contributions to the Carpenters Trusts and be bound by the written terms and conditions of their respective trust agreements:

6. TRUST FUND OBLIGATIONS: The undersigned Employer hereby becomes a party to the applicable Trust Agreements for the trust funds or their successors identified in the designated Labor Agreement. The Employer agrees to be bound by the written provisions and procedures of said Trust Agreements, and any present or future amendments, and to any successor Trust Agreements. Employer accepts as its lawful representatives, the employer trustees who are now or who may hereafter serve on the Board of Trustees of the respective Trusts as determined by the Trust Agreements.

3.4 Prompt payment of wages and fringe benefit contributions is an essential term of the Project Agreements.

3.5 The Carpenters Trusts are beneficiaries under the terms of the Project Agreements and the Master Labor Agreement.

3.6 By executing the Project Agreements, as discussed above, GHL agreed to the written terms of the (i) Carpenters Health & Security Trust of Western Washington; (ii) Carpenters Retirement Trust of Western Washington; (iii) Carpenters-Employers Vacation Trust of Western Washington; and (iv) Carpenters-Employers Apprenticeship and Training Trust of Western Washington.

3.7 GHL's obligations under the Carpenters Health Trust are set forth in Article II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of the Carpenters Health and Security Trust of Western Washington*, dated January 1, 1998, and as amended. Effective January 1, 2019, GHL's obligations are set forth in Article IX, Sections 9.01 – 9.07 of the *Trust Agreement Governing the Carpenters Health and Security Trust of*

1 *Western Washington.* Under the Carpenters Health Trust, GHL agreed to, among other
 2 things:

- 3 ▪ Submit its reports on or before the 15th day of the calendar month
 4 following the month in which the contributions are payable, even if
 5 the company had no employees for that period of time;
- 6 ▪ Comply with a request to submit any information, data, report or other
 7 documents reasonably relevant to and suitable for purposes of
 8 administration of the trust, as requested by the trust funds;
- 9 ▪ Payment of liquidated damages of twelve percent (12%) on all
 10 delinquent contributions;
- 11 ▪ Payment of interest of not less than seven percent (7%), at a rate set
 12 by the trustees from time to time; and
- 13 ▪ Payment of the trust fund's attorney fees, costs of collection, and
 14 auditor's fees.

15 3.8 GHL's obligations under the Carpenters Retirement Trust are set forth in
 16 Article II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of the*
 17 *Carpenters Retirement Trust of Western Washington*, dated January 1, 1998, and as
 18 amended. Effective January 1, 2019, GHL's obligations are set forth in Article IX, Sections
 19 9.01 – 9.07 of the *Trust Agreement Governing the Carpenters Retirement Trust of Western*
 20 *Washington*. Under the Carpenters Retirement Trust, GHL agreed to, among other things:

- 21 ▪ Submit its reports on or before the due date specified in the trust
 22 agreement or as set by the trustees, even if the company had no
 23 employees for that period of time;
- Comply with a request to submit any information, data, report or other
 documents reasonably relevant to and suitable for purposes of
 administration of the trust, as requested by the trust funds;
- Payment of liquidated damages of twelve percent (12%) on all
 delinquent contributions;
- Payment of interest of not less than seven percent (7%), at a rate set
 by the trustees from time to time; and

- Payment of the trust fund's attorney fees, costs of collection, and auditor's fees.

3.9 GHL's obligations under the Carpenters Vacation Trust are set forth in Article II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of Carpenters-Employers Vacation Trust of Western Washington*, dated January 1, 1998, and as amended. Effective January 1, 2019, GHL's obligations are set forth in Article IX, Sections 9.01 – 9.06 of the *Trust Agreement Governing the Carpenter-Employers Vacation Trust of Western Washington*. Under the Carpenters Vacation Trust, GHL agreed to, among other things:

- Submit its reports on or before the due date specified in the trust agreement or as set by the trustees, even if the company had no employees for that period of time;
- Comply with a request to submit any information, data, report or other documents reasonably relevant to and suitable for purposes of administration of the trust, as requested by the trust funds;
- Payment of liquidated damages of twelve percent (12%) on all delinquent contributions;
- Payment of interest of not less than seven percent (7%), at a rate set by the trustees from time to time; and
- Payment of the trust fund's attorney fees, costs of collection, and auditor's fees.

3.10 GHL's obligations under the Carpenters Apprenticeship Trust are set forth in Article II, Sections 8 – 13, and Article IV, Section 17 of the *Revised Trust Agreement of Carpenters-Employers Apprenticeship and Training Trust Fund of Western Washington*, dated January 1, 1998, and as amended. Under the Carpenters Apprenticeship Trust, GHL agreed to, among other things:

- 1 ▪ Submit its reports on or before the due date specified in the trust
- 2 agreement or as set by the trustees, even if the company had no
- 3 employees for that period of time;
- 4 ▪ Comply with a request to submit any information, data, report or other
- 5 documents reasonably relevant to and suitable for purposes of
- 6 administration of the trust, as requested by the trust funds;
- 7 ▪ Payment of liquidated damages of twelve percent (12%) on all
- 8 delinquent contributions;
- 9 ▪ Payment of interest of not less than seven percent (7%); and
- 10 ▪ Payment of the trust fund's attorney fees, costs of collection, and
- 11 auditor's fees.

12 3.11 Upon information and belief, following execution of the Project Agreements,

13 GHL used employees to perform work on the above-listed projects subject to the Master

14 Labor Agreement. GHL also began its monthly reporting and payment of fringe benefit

15 contributions to the Carpenters Trusts.

16 3.12 In 2018, GHL was selected for a routine audit of its payroll and related

17 business records in order to determine whether the company had fulfilled its obligations to

18 properly report and pay fringe benefit contributions to the Carpenters Trusts for the period

19 July 1, 2017 through February 28, 2018.

20 3.13 On June 11, 2018, the auditor released its *Independent Accountants' Report*

21 *on Applying Agreed-Upon Procedures*. The auditor concluded that GHL underreported

22 \$5,723.52 in fringe benefit contributions to the Carpenters Trusts, and as a result, owed

23 \$686.82 in liquidated damages and \$480.78 in accrued interest through the date of the audit

 report.

3.14 Subsequent to the release of the auditor's report, the Carpenters Trusts were able to collect \$4,893.93 from GHL, leaving an audit balance owed of \$2,678.45, consisting of \$2,477.97 in contributions and \$200.48 in accrued interest through July 2, 2019.

3.15 GHL fell behind in providing the Carpenters Trusts with the company's monthly remittance reports beginning with its June 2018 report, which was due on or before July 15, 2018. GHL eventually did provide payment in full of the contributions listed on its June 2018 report.

3.16 GHL did not timely provide its monthly remittance reports and contributions payments for the months of October through December 2018, and January 2019 through March 2019. GHL has not provided any remittance reports for the months of April and May 2019.

3.17 As of the date of this Complaint, GHL owes the Carpenters Trusts \$20,178.84 for the period October through December 2018, and January through March 2019, consisting of \$17,768.36 in delinquent fringe benefit contributions, \$1,503.35 in liquidated damages, and \$907.13 in accrued prejudgment interest calculated through July 2, 2019. Amounts owed by GHL for April and May 2019 are unknown.

IV. CAUSES OF ACTION

First Cause of Action (Breach of Labor Agreement/Trust Agreement)

4.1 The Carpenters Trusts reallege each and every allegation contained in ¶¶ 3.1 – 3.17 above.

4.2 GHL's failure to properly report and pay fringe benefit contributions constitutes breaches of the terms of the Project Agreements and the Master Labor

1 Agreement between the Union and GHL, to which the Carpenters Trusts are beneficiaries.
 2 GHL's failure to fully pay fringe benefit contributions it reported also constitutes breaches
 3 of the Trust Agreements, the terms of which GHL agreed to when it signed the Project
 4 Agreement.

5 4.3 As a result of GHL's breach, the Carpenters Trusts have been damaged in an
 6 amount to be proven at trial, but not less than \$17,768.36 in delinquent fringe benefit
 7 contributions, plus other ancillary charges including liquidated damages, prejudgment
 8 interest, attorney fees, and costs of collection.

9 **Second Cause of Action**
 10 **(Violation of ERISA)**

11 4.4 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 –
 12 3.17 above.

13 4.5 GHL's failure to report and pay fringe benefit contributions constitutes a
 14 violation of §503(a)(3), §515 ERISA, codified at 29 U.S.C. §1132(a)(3), §1145.

15 4.6 As a result of GHL's violation, the Carpenters Trusts have been damaged in
 16 an amount to be proven at trial, but not less than \$17,768.36 in delinquent fringe benefit
 17 contributions, plus other ancillary charges including liquidated damages, prejudgment
 18 interest, attorney fees, and costs of collection.

19 **Third Cause of Action**
 20 **(Breach of Fiduciary Duty)**

21 4.7 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 -
 22 3.17 above.

23 4.8 Defendant Tavis Gaudet, as GHL's sole owner, is responsible for GHL's
 reporting and payment of fringe benefit contributions to the Carpenters Trusts.

4.9 Defendant Gaudet, for purposes of ERISA, is a fiduciary of trust fund assets, because he exerted control over employee deductions withheld for payment to the Carpenters Trusts.

4.10 Defendant Gaudet has failed to turn over trust fund assets, consisting of \$486.00 in employees' vacation pay to the Carpenters Trusts, despite demand.

4.11 Defendant Gaudet's failure to remit trust fund assets is a breach of fiduciary duty under ERISA, and has damaged the Carpenters Trusts in an amount to be determined at trial, but not less than \$486.00.

Fourth Cause of Action (Conversion)

4.12 The Carpenters Trusts reallege each and every allegation contained in ¶¶3.1 – 3.17 above.

4.13 Defendant Gaudet withheld dues from GHJ's employee paychecks pursuant to the terms of the Master Labor Agreement. However, Gaudet did not remit them to the Carpenters Trusts' administration office with the company's monthly reports.

4.14 Defendant Gaudet's actions were performed for and benefitted GHL, and give rise to a cause of action for conversion.

4.15 Defendant Gaudet's failure to remit employee dues deductions to the Carpenters Trusts' administration office has damaged the Carpenters Trusts in an amount to be determined at trial, but not less than \$1,454.82.

V. REQUESTED RELIEF

The Plaintiff Carpenters Trusts respectfully request the Court grant the following relief:

- 1 A. Judgment in favor of the Carpenters Trusts against GHL, in an amount to be
2 determined at trial, but not less than \$17,768.36, representing past-due and
3 delinquent fringe benefit contributions owed by defendant pursuant to the
4 terms of the labor and trust agreements to which GHL is a party;
5
6 B. Judgment in favor of the Carpenters Trusts against GHL, in an amount to be
7 determined at trial, but not less than \$1,503.35, representing liquidated
8 damages owed by defendant pursuant to the terms of the labor and trust
9 agreements to which GHL is a party;
10
11 C. Judgment in favor of the Carpenters Trusts against GHL, in an amount to be
12 determined at trial, but not less than \$907.13, representing accrued
13 prejudgment interest owed by defendant pursuant to the terms of the labor
14 and trust agreements to which GHL is a party;
15
16 D. Judgment against Tavis Gaudet individually, for joint and several liability
17 with GHL for \$1940.82, representing \$486.00 in employees' vacation pay
18 and \$1,454.82 in employees' union dues withheld from employee paychecks
19 but not remitted to the Carpenters Trusts;
20
21 E. An award of attorney fees of not less than \$5,000.00, plus costs of collection,
22 as authorized by the labor and trust agreements to which GHL is a party, and
23 as authorized under ERISA;
24
25 F. An award of post-judgment interest at the 12% rate specified by the
26 applicable trust agreement, and as authorized under ERISA; and
27
28 G. Any other such relief under federal law or as is just and equitable.

Dated: July 2, 2019.

s/ Jeffrey G. Maxwell

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